

# MEMORANDUM

March 22, 2006

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: MICHAEL L. MOORE  
Deputy County Counsel  
Public Works Division

RE: A.D. General Engineering Construction, Inc., v. County of Los Angeles  
Los Angeles Superior Court Case No. BC 316 761

DATE OF  
INCIDENT: June 10, 2003

AUTHORITY  
REQUESTED: \$87,500

COUNTY  
DEPARTMENT: Department of Public Works

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## CLAIMS BOARD ACTION:

☒ Approve

☐ Disapprove

☐ Recommend to Board of  
Supervisors for Approval

ABSENT, Chief Administrative Office  
**ROCKY ARMFIELD**

John F. Krattli, County Counsel  
**JOHN F. KRATTLI**

Maria M. Oms, Auditor-Controller  
**MARIA M. OMS**

on April 3, 2006

## SUMMARY

This is a recommendation to settle for \$87,500, the lawsuit brought by A.D. General Engineering Construction Inc. ("A.D. General"), for "extra work" performed in the replacement of sanitary sewers on several streets in the City of Commerce, generally known as the Washington Boulevard Project ("Project"). A.D. General was the general contractor on the Project.

## LEGAL PRINCIPLES

A contractor is entitled to additional compensation if it encounters unknown conditions that were not assumed by the plans and specifications. A contractor is entitled to additional compensation if it detrimentally relies upon specifications which are erroneous. A contractor is entitled to additional compensation arising out of directives which increase the cost of performance.

## SUMMARY OF FACTS

The Project scope of work provided for the replacement of a total of 3,302 linear feet of 8, 10, and 12-inch sewer lines in the City of Commerce.

The Project consisted of trenching the roadways, shoring the sides of the trenches, replacing the sanitary sewer pipe, backfilling to an appropriate density, and resurfacing the roads. The Project was to be done in sections to minimize the impact on the businesses in the Project area.

A.D. General was the low bidder with a total contract price of \$285,067. The Project duration was 45 days with a start date of October 8, 2002, and work was to be completed on December 15, 2002.

Field acceptance of the work occurred on January 3, 2003, 17 days late.

A change order was approved adding the replacement of an additional 203 linear feet of previously unknown pipe, and authorizing night work on Pacific Way in the amount of \$33,001, thereby increasing the total contract amount to \$318,018.

A change order was approved in the amount of \$121,190 for a changed condition in soil which caused caving on Washington Boulevard, thereby increasing the contract amount to \$439,208. An unrelated adjustment downward brought the total contract to \$436,633.

These change orders did not include a waiver of additional claims related to the change orders' scope of work and therefore did not preclude A.D. General's claims for additional work.

## DAMAGES

A.D. General intends to prove at trial damages totaling \$179,596, broken down as follows:

- \$100,048 for additional work due to caving in the trenches;
- \$38,313 for additional work due to soil compaction rejections;
- \$15,083 for additional costs of working at night; and
- \$26,152 for court costs and prejudgment interest.

## STATUS OF CASE

The proposed settlement was reached after a Court-ordered arbitration. The arbitrator awarded A.D. General \$104,764 in damages.

Pending approval of the settlement recommendation, the County has filed a notice that it does not accept the arbitrator's award and requests a trial. A new trial date has not been set.

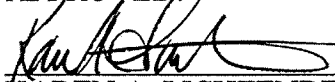
The County has incurred \$73,351 in attorney's fees and costs.

## EVALUATION

At trial, A.D. General will present evidence that both the actual time and cost of the Project were greatly increased due to the unknown condition of the soil, an erroneous compaction figure provided by the County, and a contract modification directing the entire Project to be done at night. A.D. General will assert that the partial payment of \$121,190 by the County is an admission that there was a changed condition.

Although the County disputes A.D. General's contentions, the contentions involve factual issues which a jury could decide adversely to the County. Given the considerable risk and cost of a jury trial, we recommend that the case be settled for \$87,500. The Department of Public Works concurs with this recommendation.

APPROVED:



KAREN A. LICHTENBERG

Assistant County Counsel  
Public Works Division

KAL:MLM:gm